

**Calendar No. 617**

113TH CONGRESS }  
2d Session

SENATE

{ REPORT  
113-319

CONCRETE MASONRY PRODUCTS RE-  
SEARCH, EDUCATION, AND PROMOTION  
ACT OF 2013

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 429



DECEMBER 12, 2014.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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113TH CONGRESS }  
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### CONCRETE MASONRY PRODUCTS RESEARCH, EDUCATION, AND PROMOTION ACT OF 2013

DECEMBER 12, 2014.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### R E P O R T

[To accompany S. 429]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 429) to enable concrete masonry products manufacturers to establish, finance, and carry out a coordinated program of research, education, and promotion to improve, maintain, and develop markets for concrete masonry products, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

The purpose of S. 429, the Concrete Masonry Products Research, Education, and Promotion Act of 2013, is to enable concrete masonry products manufacturers to establish, finance, and carry out a “check-off” program—a coordinated program of research, education, and promotion to improve, maintain, and develop markets—for concrete masonry products.

#### BACKGROUND AND NEEDS

Check-off programs are officially known as commodity research and promotion programs. Designed to enable cooperation among generic commodity products—such as beef, milk, raisins, peanuts, and certain heating fuel products—they are established at the request of the affected industry. Existing check-off programs establish mandatory fees on industry that fund coordinated advertising campaigns, market research, product development, and consumer education. The Government oversees the programs, which are managed by a board comprised of industry members. Unlike typical private-sector promotion programs, the goal of check-off programs is

to promote a generic commodity to increase sales, consumer awareness, and demand.

The vast majority of check-off programs in the United States are agricultural. Under the Commodity Promotion, Research, and Information Act of 1996,<sup>1</sup> the U.S. Department of Agriculture (USDA) is authorized to oversee all check-off programs for the agricultural industry and to support the creation of new check-off programs. Well-known check-off programs include advertising campaigns for milk and beef, and the USDA currently oversees at least 20 check-off programs across the agricultural industry, including products such as cotton, eggs, mangos, popcorn, pork, potatoes, processed raspberries, softwood lumber, sorghum, soybeans, and watermelons.<sup>2</sup>

The existing agriculture commodity check-off programs are overseen by the USDA's Agricultural Marketing Service. Each check-off is governed by a board, with members appointed by the Secretary of Agriculture based on the industry's nominations. Despite Federal administration of these programs, the check-off programs are fully funded and operated by the industries. According to the USDA, every \$1 spent in a check-off program yields an investment return as high as \$18.<sup>3</sup>

In addition to the USDA administered programs, there are also two check-off programs for heating fuel products. The first involves propane and was authorized by the Propane Education and Research Act of 1996.<sup>4</sup> The second covers heating oil, was initially authorized by the National Oilheat Research Alliance Act of 2000,<sup>5</sup> and was recently reauthorized by the 2014 Agricultural Act.<sup>6</sup> Both programs are overseen by the Department of Energy.

The intent of S. 429 is to establish a similar check-off program for the concrete masonry industry.

#### SUMMARY OF PROVISIONS

S. 429 would build off of the long-established Federal check-off program for agricultural goods and establish a similar program for concrete masonry products. The bill would direct the Secretary of Commerce (Secretary) to create a Concrete Masonry Products Board (Board). The Board's mission would be to develop, finance, and carry out a collective research, education, and promotion campaign to maintain, strengthen, and expand the marketplace for concrete masonry products. These activities would be financed by mandatory fees assessed on concrete masonry manufacturers collected by the Board. S. 429 would further authorize the Secretary to issue other orders related to concrete masonry, subject to simple majority votes in referenda, and would provide the Secretary with numerous tools to implement and enforce the Act.

<sup>1</sup>Pub. L. 104—127.

<sup>2</sup>U.S. Department of Agriculture, *Federal Research and Promotion Programs* (Aug. 27, 2013), (online at [www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateB&navID=ResearchandPromotion&leftNav=ResearchandPromotion&page=ResearchandPromotion&acct=AMSPW](http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateB&navID=ResearchandPromotion&leftNav=ResearchandPromotion&page=ResearchandPromotion&acct=AMSPW)).

<sup>3</sup>U.S. Department of Agriculture, *Industry Insight: Checkoff Programs Empower Business* (Sept. 21, 2011) (online at <http://blogs.usda.gov/2011/09/21/industry-insight-checkoff-programs-empower-business>).

<sup>4</sup>Pub. L. 104—284.

<sup>5</sup>Pub. L. 106—469.

<sup>6</sup>Pub. L. 113—79.

## LEGISLATIVE HISTORY

Senator Bill Nelson introduced S. 429 on February 28, 2013, with Senators Blunt, Manchin, and McCaskill as original cosponsors. The bill has 19 additional cosponsors: Senators Coons, Hagan, Burr, Chambliss, Klobuchar, Crapo, Moran, Casey, Baldwin, Levin, Cardin, Stabenow, Roberts, Durbin, Cantwell, Murray, Warner, Booker, and Menendez.

On April 9, 2014, in an open Executive Session, the Committee considered the bill and reported S. 429, as amended, favorably by voice vote. The Committee adopted a substitute amendment from Senator Nelson.

## ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

*S. 429—Concrete Masonry Products Research, Education, and Promotion Act of 2013*

Summary: S. 429 would establish the Concrete Masonry Products Board (Board), upon approval of a referendum by producers of masonry products made from concrete (CMP). The Board would develop research and education programs as well as efforts to promote CMP in domestic and foreign markets. Funding for those activities would be derived from assessments on CMP manufacturers based on the number of masonry units sold each year. The bill would direct the Secretary of Commerce to organize and hold the referendum; the agency's costs would be reimbursed by the Board from initial collections of assessments.

CBO estimates that enacting S. 429 would increase direct spending by \$141 million and increase net revenues by \$108 million over the 2015–2024 period, yielding a net increase in the deficit of \$33 million over the 10-year period. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues. CBO estimates that implementing S. 429 would have an insignificant effect on discretionary spending over the 2015–2019 period.

S. 429 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

S. 429 would impose private-sector mandates on manufacturers of CMP. Based on information from industry experts, CBO estimates that the annual cost of the mandates would fall well below the threshold established in UMRA for private-sector mandates (\$152 million in 2014, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effects of S. 429 are shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—												2015– 2019	2015– 2024
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024				
CHANGES IN DIRECT SPENDING														
Estimated Budget Authority .....	4	14	15	15	15	16	16	16	17	17	63	145		
Estimated Outlays .....	2	12	16	15	15	16	16	16	17	17	59	141		
CHANGES IN REVENUES														
Estimated Revenues .....	3	10	11	11	11	12	12	12	13	13	46	108		
NET INCREASE OR DECREASE (—) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES														
Impact on Deficit .....	—1	2	5	4	4	4	4	4	4	4	13	33		

Notes: Components may not sum to totals because of rounding.  
CBO estimates that implementing S. 429 would have an insignificant effect on discretionary spending.

Basis of estimate: CBO believes the Board established by S. 429 should be considered governmental in nature and all of its activities should be included in the federal budget. While formation of the Board would be voluntary, once it was created, the requirement to pay assessments would be compulsory, enforced by the federal government's sovereign authority.

Based on information from industry experts, CBO assumes that the referendum would be approved by the industry and that the Board and supporting staff would be appointed during 2015. We expect that collections of assessments would begin before the end of fiscal year 2015; the bill would require quarterly remittance of amounts due.

#### *Revenues*

S. 429 would authorize the Board to levy an assessment of one cent on each concrete block product sold by all CMP manufacturers in the United States. Based on information from industry experts and historical sales information, CBO expects about 1.4 billion concrete blocks and pavers will be sold in 2015 with similar sales in subsequent years, yielding, on average, estimated collections of \$14 million per year. Those amounts would be recorded in the budget as revenues, because payment of the assessments would be compulsory, enforced by the federal government's sovereign authority. CBO estimates that enacting S. 429 would increase gross revenues by \$145 million over the 2015–2024 period.

Because excise taxes and other indirect business taxes (such as assessments by the Board) reduce the base of income and payroll taxes, higher amounts of those indirect business taxes would lead to reductions in revenues from income and payroll taxes. As a result, gross assessments would be partially offset by a loss of receipts of about 25 percent each year. Thus, CBO estimates that enacting S. 429 would increase net revenues by \$108 million over the 2015–2024 period.

#### *Direct spending*

S. 429 would authorize the Board to spend amounts collected, without further appropriation, on research and education efforts as well as programs to promote sales of CMP. The bill also would authorize the Board to borrow funds to cover the Board's start-up expenses and to invest collections in interest-bearing securities, thereby generating additional funding for its activities. Expenditures of assessments and interest would be considered direct spending. Based on historical patterns for similar activities, CBO esti-

mates that expenditures by the proposed Board would total about \$141 million over the 2015–2024 period.

*Spending subject to appropriation*

S. 429 would direct the Secretary of Commerce to develop an order to establish the Board and set out its authorities, and to conduct a referendum among eligible CMP manufacturers to approve the order. After passage of the referendum, the Secretary would be responsible for approving the Board’s programs and budgets each year.

CBO estimates that implementing those provisions would cost less than \$500,000 over the 2015–2019 period, assuming the availability of appropriated funds. Under the bill, the Board would be required to reimburse the Secretary for all expenses incurred to implement and oversee the order; CBO expects that those reimbursements would be recorded as offsets to discretionary spending by the Secretary. Therefore, CBO estimates that implementing S. 429 would have a negligible net effect on spending subject to appropriation.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 429, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION ON APRIL 9, 2014

		By fiscal year, in millions of dollars—												
		2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014– 2019	2014– 2024
NET INCREASE OR DECREASE (–) IN THE DEFICIT														
Statutory Pay-As-You-Go Impact	....	0	–1	2	5	4	4	4	4	4	4	4	13	33
Memorandum:														
Changes in Outlays	.....	0	2	12	16	15	15	16	16	16	17	17	59	141
Changes in Revenues	.....	0	3	10	11	11	11	12	12	12	13	13	46	108

Estimated impact on state, local, and tribal governments: S. 429 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: S. 429 would impose private-sector mandates on manufacturers of concrete masonry products, such as cinder blocks and concrete pavers. Those manufacturers would be required to pay to the Board an assessment of one cent per masonry unit sold. CBO estimates that the cost of this mandate would amount to about \$14 million annually. The bill also would impose mandates on CMP manufacturers by requiring them to maintain records and submit information as required by the Board. Based on information from industry experts, the cost of complying with the recordkeeping requirements would be small. Consequently, CBO estimates that the aggregate cost of the private-sector mandates in the bill would fall well below the annual threshold established in UMRA (\$152 million in 2014, adjusted annually for inflation).

Estimate prepared by: Federal costs: Susan Willie; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Marin Burnett.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

##### NUMBER OF PERSONS COVERED

The legislation would apply to manufacturers of concrete masonry products.

##### ECONOMIC IMPACT

The legislation is not expected to have an adverse economic impact on the Nation.

##### PRIVACY

S. 429 would not have a negative impact on the personal privacy of individuals.

##### PAPERWORK

S. 429 would require the Secretary to issue a proposed order and allow for public comment and review before its adoption to establish the Board. The Board would be required to submit for approval to the Secretary any contracts or agreements to carry out the Board's mission, and the Board would be required to submit periodic audits and reviews to the Secretary.

##### CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

Section 1 of the bill would establish the title of the bill as the "Concrete Masonry Products Research, Education, and Promotion Act of 2013."

##### *Section 2. Findings and declaration of policy*

Section 2 of the bill would establish various findings on the importance of the concrete masonry industry and would further state the bill's purpose to establish a Federal program for concrete masonry.



### *Section 3. Definitions*

Section 3 of the bill would define numerous key terms in the bill, including “concrete masonry products,” “dry-cast concrete,” and “machine cavity.”

### *Section 4. Issuance of orders*

Section 4 of the bill would direct the Secretary to “issue orders under this Act applicable to manufacturers of concrete masonry products.” Only one such order may be in effect at any time, and it may be proposed by the Secretary or from “an existing national organization of concrete product manufacturers” or from persons affected by an order related to concrete masonry products. The Secretary would issue the order after a notice and comment period, subject to a referendum vote, the procedures of which are established in section 7 of the bill.

### *Section 5. Required terms in orders*

Section 5 of the bill would lay out the procedures by which orders are issued and the provisions of such orders. This section would establish the Board with a membership of concrete masonry manufacturers representing all regions of the United States and appointed by the Secretary through a nomination process. This section would also establish the duties of the Board in carrying out “a program of generic promotion, research, and information regarding concrete masonry products.” Such duties would include:

- administering orders and collecting assessments, as well as setting rates of assessment (see section 6);
- developing rules and bylaws;
- establishing regional organizations and committees and working committees;
- hiring employees;
- borrowing funds;
- carrying out research, education, and promotion programs and projects (paid for by the aforementioned assessments and, when appropriate, through negotiated contracts and agreements);
- maintaining minutes, books, and records; and
- investigating and reporting complaints to the Secretary, as well as recommending amendments to orders.

This section would also establish limitations and conditions for expenses of the Board and payment of those expenses; require the Board to maintain books and records and to conduct periodic audits; and prohibit the Board from influencing legislation or government action, engaging in activities that pose a conflict of interest, and advertising false or misleading claims.

### *Section 6. Assessments*

Section 6 of the bill would require concrete masonry manufacturers to pay an assessment to the Board, of which at least 50 percent of the proceedings (minus administrative expenses) would be required to be proportionally dedicated to research, education, and promotion plans and projects in support of five statutorily-established geographic regions of manufacturers. The Board would be allowed to invest the proceeds in government bonds, banks regulated by the Federal Reserve, or in instruments fully guaranteed by the

United States. The assessment rate on a manufacturer would start at \$0.01 per concrete masonry unit sold and could not rise any higher than \$0.05 per unit. A two-thirds majority of voting members of the Board would be required to change the assessment rate, and any rate increase or decrease would not be permitted to exceed \$0.01 per unit.

#### *Section 7. Referenda*

Section 7 of the bill would establish a referendum process for any order issued under section 4. Within 60 days of the effective date of an order, the Secretary would be required to conduct a referendum among all manufacturers that pay assessments under section 6. Approval of an order would require a simple majority, and each manufacturer would be eligible for one vote for each machine cavity the manufacturer has operated within six months (as established in the definitions under section 2). The Secretary would establish the procedures for all referenda and would be required to conduct subsequent referenda at the request of the Board or five years after the effective date of an order (and periodically thereafter on a five-year basis).

#### *Section 8. Petition and review*

Section 8 of the bill would grant any person subject to an order the right to petition the Secretary requesting a modification or exemption or otherwise claiming that the order is not in accordance with the law. The Secretary would subsequently conduct an administrative hearing and rule on the petition, subject to judicial review in Federal district court.

#### *Section 9. Enforcement*

Section 9 of the bill would authorize the U.S. Attorney General to bring civil actions in Federal district court for violations of the Act and for violations of orders or regulations issued by the Secretary. This section would further authorize the Secretary, subsequent to notice and a hearing, to assess civil penalties (of no more than \$5,000 per violation) and issue cease-and-desist orders.

#### *Section 10. Investigation and power to subpoena*

Section 10 of the bill would grant the Secretary the authority to conduct investigations in order to determine if the Act or any order is being violated. As part of this investigatory authority, the Secretary would be authorized to administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require production of records. The presiding officer of administrative hearings on petition reviews (under section 8) and on civil penalties or cease-and-desist orders (under section 9) would also have such authority.

#### *Section 11. Suspension or termination*

Section 11 of the bill would direct the Secretary to suspend or terminate an order or a provision of an order if the Secretary finds that it does not effectuate the purposes of the Act or was not approved by referendum conducted under section 7.

*Section 12. Confidentiality*

Section 12 of the bill would establish that nothing under this Act would require the Board to disclose information or records under section 552 of title 5, United States Code (commonly known as the Freedom of Information Act).

*Section 13. Amendments to orders*

Section 13 of the bill would establish that all of the provisions of this Act, except for the petition and review provisions under section 8, would apply to amendments to orders issued by the Secretary.

*Section 14. Effect on other laws*

Section 14 of the bill would state that the Act does not preempt any other Federal or State law authorizing research, education, and promotion related to concrete masonry.

*Section 15. Regulations*

Section 15 of the bill would authorize the Secretary to issue regulations to carry out the provisions of the Act.

*Section 16. Limitation on expenditures for administrative expenses*

Section 16 of the bill would prohibit any appropriated funds to be used for the expenses or expenditures of the Board in administering an order.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.